UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LANETTE RAE HEITZMAN Court File No.: 12CV2274 (MJD/LIB)

Plaintiff,

vs. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Scott Engelstad, Gilbert Police Department, Badge #702, in his Individual Capacity Acting Under Color of law as a Gilbert Police Officer, et al.,

Defendants.

I. INTRODUCTION

The above-entitled action came on for trial before the undersigned on November 17-19, 2014. The Court then directed the parties to attend a second mediation session with Special Master Arthur J. Boylan. The parties engaged in the second mediation session on December 11, 2014. The case did not settle and the Court then directed the parties to submit proposed findings of fact and conclusions of law to the Court for review.

At the trial, Plaintiff testified on her own behalf and called as witnesses Loretta Gulbranson, her mother who was on the telephone with Plaintiff at the time of the disputed events; James Heitzman, Plaintiff's son and a friend of Defendant Engelstad who had prior dealings with Defendant Engelstad; Sherwin Heitzman, Plaintiff's husband, who arrived on the scene after the disputed events; Rosalyn Engelstad, Defendant Engelstad's wife who was previously married to Plaintiff's brother and assisted Defendant Engelstad in Plaintiff's arrest; Michael W. Quinn, former Minneapolis Police Sergeant and Plaintiff's expert regarding the use of force; Michele Epstein, M.D., Plaintiff's treating psychiatrist and expert regarding Plaintiff's emotional injuries; and Dr. William D. Wilkins, Plaintiff's treating physician and expert regarding Plaintiff's physical injuries.

Defendant testified on his own behalf and called the following witnesses: Chelsea Trucano, a police officer who was present at the City of Gilbert police station after Plaintiff's arrest, Michael Farnsworth, M.D., a psychiatrist who performed an independent medical examination on Defendant's behalf and Catherine Leese, Plaintiff's neighbor who made the call to police regarding grass clippings.

The following are the Court's findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Plaintiff Lanette Heitzman is fifty-four years old.

2. Mrs. Heitzman grew up on the "Range" in Sparta, Minnesota, a small town next to the City of Gilbert.

3. She attended high school in Gilbert, Minnesota to the twelfth grade.

4. In 1978, after attending high school, Plaintiff married Sherwin Heitzman, her present husband.

5. Lanette Heitzman and her husband moved to California in 1987 and to Arizona in 2000. They presently live in Arizona.

6. The Heitzman's have two children, ages 35 and 32, one of whom (James Heitzman) lives in Mountain Iron, Minnesota. They have six grandchildren.

7. The Heitzman's have many nieces, nephews and friends that live on the Range in Northern Minnesota.

8. Plaintiff has been employed by the family business known as Gulbranson Excavation.

9. Gulbranson Excavation is a business that operates on the Range in Minnesota, Arizona, California and Texas. The company performs excavation for utility companies.

10. Mrs. Heitzman ran errands for her husband for the family business when she lived in Minnesota and when she moved to Arizona. She took care of office and administrative matters.

11. Lanette Heitzman is the owner and has owned a lake house with her husband at 4731 Differding Point Road, Eveleth, Minnesota for over thirty years.

12. Plaintiff's parents also own a lake house three doors down from Plaintiff's lake house. Next door to this lake house is one of Gulbranson Excavation's offices.

13. Prior to July 19, 2012, Mrs. Heitzman and her husband routinely returned to Minnesota to enjoy their lake house.

14. Plaintiff historically came back to Minnesota to enjoy her lake house two weeks during the summer, two weeks during deer hunting season and whenever it was necessary

to attend a wedding, funeral or other important event.

15. Prior to July 19, 2012, the date of the subject incident, Mrs. Heitzman had never been arrested, nor convicted of a crime of any kind with the exception of a seat belt violation years ago.

16. Plaintiff has had a history of health problems including diabetes, obesity and depression. (Pl. Ex. 54)

17. She had gastric bypass surgery in 2008. For the six months before July 19, 2012, she was feeling the best she ever had been for years.

18. Prior to July 19, 2012 and more specifically for the six months before July 19, 2012, Mrs. Heitzman was enjoying camping, hunting, cooking, raising her dogs, house maintenance, babysitting her grandchildren and nieces, horseback riding and socializing with friends. She was generally happy. This was corroborated by witnesses.

19. On July 19, 2012 Plaintiff was mowing her lawn at her lake home on Differding Point Road. (Ex. 25-26 and 28)

20. On July 19, 2012, Plaintiff also mowed the grass at her parents lake home and the next door office.

21. Plaintiff was expecting her parents to arrive in Minnesota shortly to enjoy the summer in Eveleth, Minnesota.

22. Plaintiff also mowed the overgrown grass leading from her lake home to the Gilbert Beach. (Pl. Ex. 27, 29, 32, 33, 34, and 35)

23. The Gilbert Beach and its entrance is located along Differding Point Road.

24. Plaintiff used a riding mower to cut the grass. (Pl. Ex. 24)

25. The riding mower's attachment was not working.

26. Plaintiff mowed a path leading from her lake house to the beach area so children would not have to walk on the roadway in getting to the lake and beach.

27. Plaintiff's husband had similarly mowed the same area on one occasion a week or two before July 19, 2012.

28. When Plaintiff's husband had mowed the grass he left the clippings in the roadway.

29. Historically, employees of St. Louis County mowed the high brush and grass along Differding Point Road leading to the beach area.

30. Plaintiff's neighbors have also mowed paths along their property on Differding Point Road to the beach and lake.

31. While Plaintiff mowed the grass along Differding Point Road, some of the clippings were blown into the roadway. (Pl. Ex. 39)

32. Plaintiff expected to rake up the grass clippings on the roadway with her two grandchildren.

33. Plaintiff's grandchildren, ages 8 and 10 were inside Plaintiff's lake house.

34. The grass mowing exhausted Plaintiff.

35. Plaintiff is diabetic and was weak after the mowing because her sugar level

was low.

36. When Plaintiff's sugar level is low she appears weak, exhausted and tired.

37. The grass mowing took Plaintiff approximately four hours to complete.

38. On July 19, 2012, a long time neighbor of Plaintiff, Catherine Leese rode by Plaintiff's lake house on a bicycle and stopped.

39. Catherine Leese criticized Plaintiff for mowing the grass claiming she was polluting the environment.

40. Plaintiff told Ms. Leese she was making the area look nice and manicured.

41. Ms. Leese continued on her bicycle to her lake house located on Differding Point Road, five houses away.

42. Ms. Leese was familiar with Plaintiff's lake house address because in 2006 she had reported a possible burglary at the same address.

43. Just before noon on July 19, 2012, Catherine Leese called 911.

44. Ms. Leese complained that someone (Plaintiff) was defacing public property with a lawn mower along Differding Point Road near her lake home. (Pl. Ex. 5)

45. The Gilbert Police Department dispatched Defendant Scott Engelstad to the scene.

46. After Mrs. Heitzman finished mowing the grass she called her mother, Loretta Gulbranson who lives in Nevada.

47. Plaintiff was talking to Loretta Gulbranson on her cell phone.

48. Plaintiff was talking to her mother while Plaintiff was standing outside halfway

down her driveway.

49. Plaintiff called her mother Loretta Gulbranson to let her know that she spoke to a neighbor (Ms. Leese) that had complained about her mowing.

50. The phone call to Loretta Gulbranson by Lanette Heitzman took place just before noon on July 19, 2012. (Pl. Ex. 11 and 12)

51. While Plaintiff was talking to Loretta Gulbranson, Plaintiff saw a squad car slowly driving past her house. (Pl. Ex. 23)

52. The squad car was from the City of Gilbert.

53. The squad car came back and stopped at the bottom of Plaintiff's driveway just before noon on July 19, 2012.

54. The squad car was operated by Defendant Scott Engelstad.

55. On July 19, 2012, Scott Engelstad was an employee of the Gilbert Police Department and the City of Gilbert, Badge #702. He was a patrolman and an employee of the Gilbert Police Department from 1998 to August of 2012.

56. On July 19, 2012, Defendant Scott Engelstad was wearing his police uniform, was armed with his service revolver and had handcuffs on his person.

57. Defendant Engelstad's squad car's red emergency lights were not on when he arrived at Plaintiff's lake house.

58. The squad car's siren was not on and the video was not operating.

59. Officer Scott Engelstad climbed out of his car and yelled at Plaintiff, "You

can't cut the grass there."

60. Plaintiff replied, "Really" "I can't cut the grass on my own property."

61. Defendant Engelstad replied that "you can't blow it on the road."

62. Defendant Engelstad did not ask Plaintiff whether she had mowed the grass along Differding Point Road.

63. Defendant Engelstad did not ask Plaintiff whether she had blown any grass into the road.

64. Defendant Engelstad did not tell Plaintiff what illegality she can committed that caused him to stop.

65. Defendant Engelstad did not tell Plaintiff he was investigating a homicide, misdemeanor or petty misdemeanor.

66. Defendant Engelstad didn't tell or announce to Plaintiff anything at all about why he was there.

67. Defendant Engelstad didn't want to talk to Plaintiff after she requested a different officer to come to the lake house.

68. Allowing grass cuttings to remain in the roadway was considered a petty misdemeanor by Defendant Engelstad.

69. Plaintiff told Defendant Engelstad that she didn't like his tone and asked him his name. Defendant Engelstad yelled out "Englelstad."

70. The yelling of his last name by Defendant Engelstad was heard by Loretta

Gulbranson.

71. Loretta Gulbranson was still on the phone with Plaintiff and listening to what was happening.

72. Plaintiff asked Defendant Engelstad to call another officer to the scene.

73. Plaintiff was scared.

74. When Defendant Engelstad yelled his name at Plaintiff, she knew who he was.

75. Defendant Engelstad turned to his right and called his supervisor Ty Techar to come to Mrs. Heitzman's lake house.

76. Plaintiff's request of Defendant Engelstad to call another officer to the scene appeared to anger Defendant Engelstad because as he turned back towards Mrs. Heitzman and as he was facing her three to six steps away, he threw his 8 ½ inch by 11 inch police pad on the ground by her and yelled, "Damn you" or words to that effect.

77. Defendant Engelstad's demeanor changed drastically.

78. Plaintiff began to cry.

79. Officer Engelstad's behavior and demeanor frightened Mrs. Heitzman.

80. Defendant Engelstad then took two steps towards Plaintiff.

81. Mrs. Heitzman took two steps back. She was backing up towards the lake house.

82. Mrs. Heitzman was scared and frightened of Defendant Engelstad.

83. Plaintiff asked Defendant Engelstad to stand by his car and she would stand where she was and the two of them could wait for the other officer to arrive.

84. Defendant Engelstad took another two steps towards Mrs. Heitzman.

85. Mrs Heitzman asked her mother who was still on the cellular phone to call 911.

86. Loretta Gulbranson called 911 or a law enforcement agency to request a different officer to come to the scene. (Pl. Ex. 9 and 10)

87. Loretta Gulbranson told law enforcement when she made the call that a different officer was necessary at the scene because Scott Engelstad has a "conflict" and "has a personal vendetta for our family."

88. Mrs. Heitzman took another two steps backwards.

89. Defendant Engelstad took another two steps forward towards Mrs. Heitzman and as the two approached the lake house they were facing each other and both of them were eventually moving sideways towards the steps of the lake house.

90. During the movement towards the steps of the lake house, Defendant Engelstad never talked.

91. Loretta Gulbranson, still on the cell phone, heard no police commands or orders.

92. Plaintiff asked Defendant Engelstad several times and even pleaded with him if he would stand by his car and she would stand where she was and wait for the other officer.

93. As the two of them arrived at the steps of the lake house, hearing no reply, comments or requests from Defendant Engelstad, Mrs. Heitzman stated something to the effect that she was going to go in the house, that Officer Engelstad should go in his car and when the other officer arrives, she would come out and they could take care of this.

94. This request apparently angered Defendant Engelstad because as Plaintiff turned to face the cabin on the first step she heard Defendant Engelstad say, "No, you go in the house and I'll arrest you."

95. As Plaintiff turned back around to face Defendant Engelstad, Mrs. Heitzman asked him if he was really going to arrest her for going into the house.

96. This statement made Defendant Engelstad even angrier because he grabbed Mrs. Heitzman's arm.

97. Mrs. Heitzman did not resist when Defendant Engelstad grabbed Mrs. Heitzman's arm.

98. Defendant Engelstad spun Mrs. Heitzman around several times forcing her towards the house's driveway.

99. Defendant Engelstad slammed the left side of Mrs. Heitzman face down on the hood of a family car that was parked in her driveway.

100. Defendant Engelstad then proceeded to forcefully push on Mrs. Heitzman's neck and back with his arm to hold her down and then handcuffed Mrs. Heitzman's wrists behind her as she was bent over the hood of the car.

101. Defendant Engelstad continued to hold on to Mrs. Heitzman and walked her over to his squad car where she got in by herself without any assistance from Defendant Engelstad.

102. As Plaintiff sat in the back of the squad car, one of her grandchildren could see her

sitting in the back of the police car.

103. Plaintiff's granddaughter called Plaintiff's husband in excitement four or five times to let him know that "Nanna" (Mrs. Heitzman) was handcuffed in the back of a police car.

104. Plaintiff's husband was driving back from working in Duluth, Minnesota.

105. Defendant Engelstad claims that some people just don't take him seriously.

106. Defendant Engelstad also claims that he repeatedly ordered Mrs. Heitzman to stand by his squad car until the other officer arrived on the scene.

107. Mrs. Heitzman did not at any time become threatening to Defendant Engelstad.

108. At no time did Mrs. Heitzman brandish a weapon.

109. At no time did Mrs. Heitzman flea the scene.

110. Mrs. Heitzman did not at any time struggle with Defendant Engelstad.

111. Mrs. Heitzman did not at any time punch, kick or scratch Defendant Engelstad.

112. At no time did Mrs. Heitzman spit at Defendant Engelstad or call him names.

113. At no time did Mrs. Heitzman physically or verbally threaten Defendant Engelstad, yell or swear at him.

114. Plaintiff was never given the opportunity to rake up the grass clippings.

115. The handcuffs hurt Mrs. Heitzman because of how tight and how they were applied.

116. The handcuffs were applied to one of Mrs. Heitzman's wrists very tightly at an

angle over one of her wrist bones.

117. Plaintiff asked that her handcuffs be loosened.

118. Plaintiff's sugar level was still low, she was hot, exhausted from the mowing and from being restrained by Engelstad.

119. Mrs. Heitzman did not pose a threat of harm to Defendant Engelstad or others.

120. Mrs. Heitzman did not resist arrest.

121. The situation between Defendant Engelstad and Mrs. Heitzman was not tense, uncertain, and rapidly evolving which would force an officer to make split-second judgments about how much force is necessary.

122. On the contrary, the situation between Defendant Engelstad and Mrs. Heitzman was calm, controlled, certain and rather matter of fact.

123. Mrs. Heitzman's crying and backing up would lead a reasonable police officer to believe she was frightened of the officer and not combative.

124. The situation involving grass cutting did not require any split second judgments about use of force.

125. Plaintiff's experience with this police officer was different from any that she had previously witnessed.

126. Plaintiff's version of what happen at the lake house on July 19, 2012 starkly contrasts with Defendant Engelstad's version of what happen.

127. The only witnesses to what transpired between Plaintiff and Defendant Engelstad

are Mrs. Heitzman, Defendant Engelstad, Plaintiff's granddaughter inside the lake house and Loretta Gulbranson.

128. Plaintiff called Loretta Gulbranson on the telephone immediately after she was released from jail and told Loretta Gulbranson her account of what had happen.

129. This conversation between Plaintiff and Loretta Gulbranson is in addition to the communication they had while the parties were at the lake house.

130. Loretta Gulbranson was present during the trial and heard the testimony of both Plaintiff and Defendant.

131. Plaintiff's account of what happen on July 19, 2012 between Plaintiff and Defendant Engelstad is consistent with Loretta Gulbranson's testimony of what Plaintiff told her when she was released from jail.

132. Defendant's Engelstad's testimony is not consistent with Loretta Gulbranson's testimony and account of the events.

133. At no time did Defendant Engelstad tell Plaintiff why she was under arrest or why he stopped at the lake house.

134. Defendant Engelstad's testimony that he did not have a chance to tell Plaintiff why he was at her lake house is not credible given the fact that he had ample time to arrest her.

135. Defendant Engelstad did not ask for Plaintiff's name when he arrived on the scene.

136. Defendant Engelstad did not ask Plaintiff for her driver's licence at the scene.

137. Defendant Engelstad did not ask Plaintiff for any identification at the scene.

138. Defendant Engelstad knew who Mrs. Heitzman was shortly after he arrived on the scene or at a least knew of her because of past dealings with her and her son.

139. The two of them apparently realized who each other was at the moment he yelled "Engelstad" and when he threw his police property at Mrs. Heitzman in the driveway yelling "Damn You."

140. Mrs. Heitzman's lake house is three doors down from the lake house where her son James Heitzman usually stayed.

141. Mrs. Heitzman's son, James Heitzman, was a good friend of Defendant Engelstad.

142. James Heitzman and Defendant Engelstad have been good friends since 2008.

143. James Heitzman and Defendant Engelstad frequented bars and restaurants together for many years prior to 2012.

144. Many times the two of them would have conversations together at the bars in Gilbert, Minnesota.

145. These conversations between James Heitzman and Defendant Engelstad were sometimes about Mrs. Heitzman and how she would meddle in her son's affairs and welfare.

146. The conversations took place before July 19, 2012.

147. Defendant Engelstad and James Heitzman had discussed in 2010 how James Heitzman could obtain a restraining order against Plaintiff because of her getting in the middle of his affairs.

148. The City of Gilbert where Defendant Engelstad and James Heitzman frequented

bars together has a population of approximately 2000 people.

149. Mrs. Heitzman and Defendant Engelstad knew each other from prior dealings with each other and Mrs. Heitzman's son.

150. On December 12, 2008, Plaintiff's son James Heitzman was involved in a serious motor vehicle accident involving alcohol. (Pl. Ex. 15)

151. On February 9, 2010, Plaintiff's son, James Heitzman was involved in a serious snowmobile accident involving alcohol. (Pl. Ex. 16)

152. On February 9, 2010 and on February 14, 2010, Plaintiff made numerous calls to 911 requesting that Defendant Engelstad leave her son James Heitzman's house because Defendant Engelstad was a bad influence on his drinking behavior. (Pl. Ex. 13 and 14)

153. On February 14, 2010, Plaintiff called the Gilbert Police Department and requested a welfare check on her son. (Pl. Ex. 17).

154. Plaintiff requested that Defendant Scott Engelstad leave the scene (James Heitzman's residence) and it was noted that "she has an issue with Officer Engelstad." (Pl. Ex. 17)

155. Unbeknownst to Plaintiff, when she made the call in 2010 to the Gilbert Police Department, Plaintiff was actually talking with Officer Engelstad and telling him she has issues with him as it relates to her son.

156. Defendant Engelstad had on a prior occasion advised Mrs. Heitzman's son how to get around a driving under the influence charge by drinking in excess after the driving

conduct.

157. Rosalyn Engelstad is Defendant Engelstad's wife. (Pl. Ex. 4)

158. Rosalyn Engelstad and Plaintiff's brother had previously been married.

159. Rosalyn Engelstad and Plaintiff's brother have a child together who is now an adult.

160. Mrs. Engelstad and Plaintiff's brother have been involved in protracted litigation for over thirty years regarding a child support dispute.

161. Rosalyn Engelstad knows Plaintiff, Plaintiff's husband, Loretta Gulbranson and her husband Merlin Gulbranson.

162. Rosalyn Engelstad and Plaintiff went to high school together in Gilbert, MN.

163. The Engelstads were and still are today pursuing claims in excess of $100,000 against Plaintiff's brother.

164. Prior to July 19, 2012, Defendant Engelstad knew of the claims his wife was pursuing against Plaintiff's brother.

165. Prior to July 19, 2012, Mrs. Engelstad took steps to revoke Mrs. Heitzman's brother's driver's license and passport while he was in another country.

166. She is presently again taking steps to revoke Mrs. Heitzman's brother's passport through a child support collection office.

167. Rosalyn Engelstad is not a police officer and never has been a police officer.

168. Rosalyn Engelstad has assisted her husband, Defendant Engelstad in police business.

169. She helped transport Mrs. Heitzman's cousin, Lawrence Gulbranson, who was under arrest, in her personal vehicle years ago. Rosalyn Engelstad was asked to bring her personal motor vehicle to a crime scene and transport Lawrence Gulbranson to the jail.

170. Rosalyn Engelstad again assisted in police business when she gave advise and instructions to Officer Engelstad pertaining to this case.

171. Rosalyn Engelstad advised Defendant Engelstad how to schedule a Court appearance for Plaintiff.

172. Defendant Engelstad supervisor, Ty Techar eventually arrived on the scene while Plaintiff was already seated in Defendant Engelstad's squad car.

173. Defendant Engelstad drove Mrs. Heitzman to the police station.

174. During the drive, she was still hot, in pain, exhausted and felt like she was going to pass out.

175. Upon arrival at the Gilbert Police Department, Defendant Engelstad took Mrs. Heitzman to a booking area.

176. The handcuffs were causing Mrs. Heitzman great pain.

177. Eventually, the handcuffs were taken off her wrists.

178. When Sherwin Heitzman arrived on the scene he was instructed to clean up the grass clippings on Differding Point Road before attending to his wife at the police station.

179. Sherwin Heitzman cleared the grass clippings from Differding Point Road.

180. Once her husband arrived and paid bail of $300, Mrs. Heitzman was released from

custody. (Pl. Ex. 7)

181. Plaintiff saw a doctor for her injuries later that day. (Pl. Ex. 41 and 52)

182. Plaintiff was charged with Obstructing Legal Process by Defendant Engelstad. (Pl. Ex. 6)

183. After Mrs. Heitzman brought this lawsuit, the Gilbert City Attorney added two charges of public nuisance against Mrs. Heitzman.

184. The obstruction of legal process charge was dismissed.

185. Plaintiff pled guilty to a petty misdemeanor public nuisance violation.

186. Plaintiff's expert witness, Michael Quinn is a retired Minneapolis Police Sergeant and is an expert on the use of force by police officers. He trains police officers in the use of force and has written extensively on the subject.

187. Mr. Quinn opined that the grabbing of Plaintiff's arm and handcuffing Plaintiff's wrists was excessive force under the totality of the circumstances on July 19, 2012.

188. Mr. Quinn opined that the spinning around of Plaintiff and forcing her towards the motor vehicle located in the lake house's driveway was excessive force under the totality of the circumstances on July 19, 2012.

189. Mr. Quinn opined that the forcing or slamming of Plaintiff's head onto the hood of the motor vehicle located in the driveway of the lake house was excessive force under the totality of the circumstances on July 19, 2012.

190. Mr. Quinn opined that a reasonable officer would have spoken to Mrs. Heitzman

about the grass cutting and might have at most issued her a petty misdemeanor ticket on the scene without any use of force.

191. Defendant Engelstad offered no witness' testimony, lay or expert, regarding the use of force by Defendant Engelstad on July 19, 2012.

192. The Court adopts the opinions of Mr. Quinn as its Findings of Fact regarding the unreasonable and excessive use of force in this case.

193. As a result of the encounter with Defendant Engelstad, Mrs. Heitzman suffered bruising on her face when she hit the hood of the car. (Pl. Ex. 42)

194. She also suffered neck, back, shoulder and wrist injuries when she was twisted around by Defendant Engelstad and when he forcefully used his arm applying continuing pressure on her neck and back to keep her on the hood of the car; and his handcuffing of her thereafter. (Pl. Ex. 55).

195. The handcuffs were so tight they hurt Plaintiff and left marks on her wrist. (Pl. Ex. 43-45)

196. As a direct result of the actions of Defendant Engelstad, Plaintiff experienced and continues to experience headaches and has sustained emotional injuries, including anxiety and sleeplessness, and a moderately severe case of Post Traumatic Stress Disorder. (Pl. Ex. 53, 54 and 59)

197. As a direct result of the actions of Defendant Engelstad, Mrs. Heitzman has attempted suicide by prescription medication overdose on at least three occasions, once during

December of 2012 and two to three other times in 2013.

198. Mrs. Heitzman's husband now helps administer her medication to her to prevent any further overdoses.

199. Mrs. Heitzman lives in fear and anxiety and is afraid of police officers because of what Defendant Engelstad did to her on July 19, 2012.

200. Mrs. Heitzman's physical and more importantly emotional injuries are well-documented in the medical records of Drs. Epstein, Dr. Wilkins and her primary care providers. (Pl. Ex. 53-61)

201. Dr. Wilkins opined to a reasonable degree of certainty that Mrs. Heitzman suffered soft tissue injuries to her back, neck, and shoulders; and contusions and abrasions over her body all as a direct result of Mrs. Heitzman's encounter with Defendant Engelstad.

202. Mrs. Heitzman's treating psychiatrist, Dr. Epstein, opined to a reasonable degree of medical certainty that Mrs. Heitzman will require prescription medication because of what happen on July 19, 2012 for the rest of her life to treat her anxiety and moderately severe post traumatic stress disorder that was caused by Defendant Engelstad. She also opined that Plaintiff will benefit from monthly psychiatric consultations with her and additional therapy with Mrs. Heitzman's therapist's office, i.e. Safe and Sound Counseling in conjunction with the psychiatric consultations.

203. This Court adopts the opinions of Drs. Wilkins and Epstein as its Findings of Fact regarding Plaintiff's physical and emotional injuries caused by Defendant Engelstad.

204. On one occasion in November of 2013 Plaintiff was even hospitalized in fear that she was having a heart attack because of her severe anxiety. (Pl. Ex. 60)

205. Dr. Epstein also opined that Plaintiff has symptoms of incapacitating anxiety, crying spells, avoidance behavior (unable to leave her home) and intractable insomnia, with severe nightmares that replay the traumatic incident. She also opined that even though Lanette suffered from recurrent depression in the past, she was basically asymptomatic for the five years before the incident and living a full life. This was confirmed by her family members.

206. Defendant's expert psychiatrist was unable to opine within any reasonable degree of certainty regarding the current cause or etiology of Plaintiff's anxiety but agreed that Plaintiff does suffer from severe anxiety that is real that limits Plaintiff in engaging in her daily living activities. He also opined that Plaintiff was not malingering or faking her symptoms.

207. Since July 19, 2012 and as a direct cause of Defendant Engelstad's actions, Plaintiff no longer enjoys camping, hunting, cooking, taking care of her dogs, house maintenance, babysitting her grandchildren and nieces or horseback riding.

208. After July 19, 2012, Plaintiff and her husband moved to a new neighborhood because she saw too many police officers in her old neighborhood.

209. Police officers remind Mrs. Heitzman of what happen on July 19, 2012.

210. Plaintiff rarely socializes with her friends anymore and she is afraid to leave her house because of what happen with Defendant Engelstad on July 19, 2012.

211. Mrs. Heitzman has stopped going to Al-Anon and stopped meeting with her sponsor,

(because of her son's addition to alcohol); and stopped going to her children's homes because of the incident with Defendant Engelstad.

212. Defendant Scott Engelstad was acting in the scope of his employment for the City of Gilbert at the time of his actions toward Lanette Rae Heitzman on July 19, 2012.

213. As a direct result of Defendant Engelstad's actions, Plaintiff suffered past bodily harm, including physical pain, suffering, and disability.

214. As a direct result of Defendant Engelstad's actions, Plaintiff suffered past and will in the future suffer mental harm, including emotional distress, disability, and embarrassment.

215. As a direct result of Defendant Engelstad's actions, Plaintiff suffered past and will in the future suffer health care expenses.

216. As a direct result of Defendant Engelstad's actions, Plaintiff suffered reasonable and necessary past health care expenses totaling $22,420.43. This amount includes $1023.43 in medication prescribed by Dr. Epstein. (Pl. Ex. 54, 56, 58, 60-62, 66)

217. The reasonable and necessary medical expense charges by Michele F. Epstein, M.D. or any other private psychiatrist in the local community where Plaintiff lives for the treatment she is receiving is $175/hr.

218. The reasonable and necessary therapy expense charges by Safe and Sound Counseling in the local community where Plaintiff lives for the treatment she is receiving

is $130/hr.

219. Plaintiff's life expectancy is approximately twenty-nine years according to current mortality tables.

220. If Plaintiff were to treat with her psychiatrist Michele F. Epstein, M.D. at the rate of one visit per month for the rest of her life, this equates to ($175/hr. x 12 x 29 yrs.) $60,900 over Plaintiff's life time.

221. Based on the prescription expense Plaintiff is incurring for medications prescribed by Dr. Epstein, (for an approximate 1 year period- September 2013 through July of 2014) if Plaintiff were to take such medication for the rest of her life, this equates to ($1,023.43 x 29 yrs.) $29,679.47.

222. If Plaintiff were to treat with her therapist at Safe and Sound Counseling at the rate of one visit per month for the rest of her life, this equates to ($130/hr. x 12 x 29 yrs.) $45,240 over Plaintiff's life time.

III. CONCLUSIONS OF LAW

1. Plaintiff proved by a preponderance of the evidence that Defendant used unreasonable force on Plaintiff in violation of her Fourth Amendment constitutional rights. "The right to be free from excessive force is a clearly established right under the Fourth Amendment's prohibition against unreasonable seizure of the person." *Guite v. Wright*, 147 F. 3d 747. 760 (8th Cir. 1998).

2. "The right to be free from excessive force in the context of an arrest is clearly

established under the Fourth Amendment's prohibition against unreasonable searches and seizures. *Brown v. City of Golden Valley*, 574 F.3d 491 499 (8th Cir. 2009).

3. An excessive force claim is "evaluated under the reasonableness standard of the Fourth Amendment." *Johnson v. Carroll*, 658 F.3d 819, 825 (8th Cir. 2011) (quoting *McKenney v. Harrison*, 635 F.3d 354, 359 (8th Cir. 2011)).

4. The Eighth Circuit recognizes that during an arrest, an officer has the "right to use some degree of physical coercion or threat" to effectuate an arrest. *Brown*, 574 F.3d at 496 (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989). "To establish a constitutional violation under the Fourth Amendment's right to be free from excessive force, the test is whether the amount of force used was objectively reasonable under the particular circumstances. *Henderson v. Munn*, 439 F.3d 497, 502 (8th Cir. 2006). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396.

5. When determining whether the force was excessive, a balancing of the "individual's Fourth Amendment interest against the countervailing government interest at stake" is required. *Id*. (internal quotation marks omitted). Some relevant considerations include: the severity of the crime; whether the suspect poses a threat of harm to others; whether the suspect is resisting arrest; and other factors, such as whether the situation is "tense, uncertain, and rapidly evolving," which would force an officer to make "split-second

judgment" about how much force is necessary. *McKenney*, 635 F.3d at 360 (quoting *Graham*, 490 U.S. at 396-97).

6. In *Goff v. Bise*, 173 F.3d 1068, 1072 (8th Cir 1999), the plaintiff alleged that the defendants, the mayor and chief of police, arrested plaintiff without probable cause and used excessive force in effectuating the arrest, and that the defendants' actions were motivated by a private dispute between the plaintiff and the mayor arising from an affair the mayor was having with plaintiff's wife. The Eight Circuit held that in the "unusual circumstances presented, the district court did not abuse its discretion in admitting evidence of the alleged affair from which the jury could find that the defendants acted with an improper motive. Although *Graham,* 490 U.S. 386, 394 (1989) established an objective reasonableness Fourth Amendment standard for excessive force arrest claims, the *Graham* court recognized that in some cases the defendant's ill will toward the plaintiff is relevant. "[I]n assessing the credibility of an officer's account of the circumstances that prompted the use of force, a fact finder may consider, along with other factors, evidence that the officer may have harbored ill-will toward the citizen." *Graham*, 490 U.S. 386, 399 n. 12, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). "Given plaintiff's allegations that defendants acted out of improper personal motive, the evidence of the alleged affair would help the jury determine whether to believe the plaintiff's or defendants' version of the encounter." *Goff v. Bise*, 173 F.3d 1068, 1072 (8th Cir 1999).

7. This case involved at its root grass cutting by a woman in the middle of the day. No

force was necessary and clearly none was justified.

8. Defendant Engelstad, maliciously and without justification, used extreme force and violence against a middle aged diabetic and exhausted woman who had just finished mowing grass for some hours. The *Graham* factors and *Goff* fully support Mrs. Heitzman's claims.

9. Defendant claims that any force that was used against Mrs. Engelstad was reasonable because he needed to keep her from fleeing and for his own safety. The facts in this case suggest otherwise. Defendant's claims are inconsistent with what evidence was presented. Specifically, at no time did Mrs. Heitzman try to flee and no one's safety was ever in issue. For Defendant Engelstad to claim that he never got the chance to tell Plaintiff why he was on the scene or what she had done that may have been criminal in nature is simply not credible.

10. Defendant also claims that he walked her or "escorted" Mrs. Heitzman over to the car located in her driveway and applied handcuffs without incident. The facts presented suggest otherwise. The evidence has shown that Mrs. Heitzman offered no resistance or noncompliance once Defendant Engelstad grabbed Plaintiff's arm. Mrs. Heitzman did not use or threaten any measurable level of force towards any officer. The officer had no cause for the use of force towards Mrs. Heitzman. There was simply no reason to use any level or degree of force in this case.

11. In assessing the credibility of Defendant Engelstad's account of the circumstances

that prompted his use of force, this Court has considered, among other things, evidence that Defendant Engelstad may have harbored ill-will towards Mrs. Hietzman. There was evidence that Defendant Engelstad's previous relationship with Plaintiff regarding Plaintiff's son dating back to 2008 as well as he and his wife's past and present claims for child support in excess of $100,000 against Plaintiff's brother supports this conclusion. Given the unique circumstances in this case, it was appropriate to consider such matters in evidence. However, even if the Court were not to consider any ill-will or personal motive of Defendant Engelstad against Mrs. Heitzman, this Court still concludes that Defendant Engelstad used excessive force against Mrs. Heitzman. An objective analysis of his conduct leads to this conclusion.

12. Since this Court has found that Defendant use excessive force against Mrs. Engelstad, by definition Defendant Engelstad has also committed assault and battery- which was pled by Plaintiff in her Amended Complaint- under Minnesota law as a matter of law. See *Paradise v. Minneapolis*, 297 N.W. 2d 152, 155 (Minn. 1980). Although a police officer may use reasonable force in making an arrest, if arresting officers have "used excessive force, their touching of Plaintiff would be unpermitted and thus constitute a battery. *Id*.

13. Under the principle of *respondeat superior*, an employer is vicariously liable for an employee's torts committed within the course and scope of employment. *Farendorff v. North Homes, Inc.*, 597 N. W. 2d 905, 910 (Minn. 1999). "Such liability stems not from

any fault of the employer, but from a public policy determination that liability for acts committed within the scope of employment should be allocated to the employer as a cost of engaging in that business." *Id.* The Minnesota Supreme Court has interpreted the doctrine to hold an employer liable for even the intentional misconduct of its employees when "(1) the source of the attack is related to the duties of the employee, and (2) the assault occurs within work related limits of time and place." *Id*, citing *Lange v. Nat'l Biscuit Co.*, 297 Minn. 399, 404, 211 N.W. 2d 783, 786 (1973). An "important consideration in determining whether an act is related to the duties of employment is whether the act was foreseeable." *Hagen v. Burmeister & Assoc.*, 633 N.W. 2d 497, 504 (Minn. 2001).

14. It is undisputed that Defendant Engelstad was on duty at the time of the subject incident, and that his use of force against Lanette Heitzman occurred in the course of his duties. Moreover, it is foreseeable that police officers will use force in arresting persons, thus they are armed and trained in the use of force. To the extent Defendant Engelstad used excessive force against Mrs. Heitzman, the City of Gilbert is liable as well.

15. Because Defendant Engelstad's actions were taken in the scope and course of his employment (see Answer to Amended Complaint ¶¶10 and 38), the City may be held liable for that battery under the doctrine of *respondeat superior*. See, Minn. Stat. § 466.02. Accordingly, the Court will direct entry of judgment against both Defendant Engelstad and the City of Gilbert, jointly and severally.

16. Mrs. Heitzman suffered the following physical injuries as a result of the July 19, 2012 incident: Soft tissue injuries to her back, neck, and shoulders; injury to her head and face, caused by impact with the car hood; and contusions and abrasions over her body.

17. In addition to the physical injuries she sustained, Mrs. Heitzman's mental health was severely affected by the events of July 19, 2012. She has been diagnosed with a moderately severe case of Post-Traumatic Stress Disorder (PTSD) and anxiety. Her treatment with her psychiatrist is ongoing. She will need medication because of this illness the rest of her life. Her symptoms and effects of her injury have permanently affected Mrs. Heitzman's ability in various areas of her life.

18. Mrs. Heitzman has received medical bills totaling over approximately $22,000 for various medical and psychiatric treatment she has received because of the incident. She is continuing to treat and her providers have testified that she requires continued medical and psychiatric care in the future.

19. Mrs. Heitzman has also suffered past and future pain and suffering related to the subject incident. Mrs. Heitzman's witnesses corroborated that the emotional distress, mental anguish, embarrassment and humiliation Mrs. Heitzman suffered at the hands of Defendant Engelstad have affected every aspect of her daily life.

20. Mrs. Heitzman is a woman who has worked hard, to the best she could, to provide and take care of her family and to improve her community. The incident has been devastating to Mrs. Heitzman, and has taken a great toll on her relationship with her

husband, her two children, six grandchildren and parents.

21. Plaintiff is entitled to damages that will fairly and adequately compensate her for her injuries caused by the incident on July 19, 2012, up to the time of trial as follows:

A. Past bodily harm, including physical pain, suffering, and disability: $30,000;

B. Past mental harm, including emotional distress, disability, and embarrassment: $125,000;

C. Past health care and prescription expenses: $22,420.43.

22. Plaintiff is entitled to damages that will fairly and adequately compensate her for her injuries caused by the incident on July 19, 2012, reasonably certain to occur in the future, as follows:

A. Future bodily harm, including physical pain, suffering, and disability: $0;

B. Future mental harm, including emotional distress, disability, and embarrassment: $265,000;

C. Future health care expenses: $45,000. ($106,140 future psychiatric and therapy expenses for twenty-nine years reduced to present value using a three per cent discount rate).

D. Future prescription expense: $12,594.38 ($29,679.47 for mental health care medication for twenty-nine years reduced to present value using a three per cent discount rate).

23. The Court has previously ruled (Doc. No. 97) that Mrs. Heitzman is entitled to pursue punitive damages in this case, pursuant to *Smith v. Wade*, 461 U.S. 30 (1983). A fact finder may be permitted to access punitive damages in an action under 42 U.S.C. §1983 where the defendant's conduct involved reckless or callous indifference to a plaintiff's federally protected rights, as well as when it is motivated by evil motive or intent. *Id.*

24. Plaintiff has demonstrated that Defendant's conduct in using excessive force and taking Mrs. Heitzman into custody and then creating facts to cover up and justify his conduct warrants an award of punitive damages. Defendant Engelstad's conduct also involved reckless or callous indifference to Mrs. Heitzman's federally protected rights. Defendant Engelstad's previous relationship with Plaintiff regarding Plaintiff's son dating back to 2008 and continuing into 2010 and thereafter as well as he and his wife's past and present claims for child support in excess of $100,000 against Plaintiff's brother supports this conclusion. Moreover, it appears Defendant Engelstad was on July 19, 2012 motivated by ill-will and evil intent**.** The evidence has shown that Defendant Engelstad acted out of improper personal motive given his knowledge of Plaintiff by dealing with her on previous occasions, discussing Plaintiff with Plaintiff's son over the years as well as by Defendant Engelstad's knowledge of his wife vigorously pursuing monetary claims against Plaintiff's brother for over three decades and his knowledge of her taking steps to revoke Mrs. Heitzman's brother's United States passport.

25. Even if the Court does not consider Defendant Engelstad's prior relationship with Plaintiff or Plaintiff's son, or does not consider his or his wife's pursuit of child support against Plaintiff's brother, this Court still concludes that Defendant Engesltad's actions and conduct on July 19, 2012 towards Plaintiff involved reckless or callous indifference to Plaintiff's federally protected rights.

26. This Court assess punitive damages against Defendant Scott Engelstad as follows: $150,000.

27. In an action in the United States District Court, "costs should be allowed to the prevailing party." See F. R. Civ. P. 54 (d). "In any action or proceeding to enforce [42 U.S.C. section 1983], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." See 42 U.S.C. § 1988 (b). "To be a prevailing party, the plaintiffs must 'succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit."' See *Forest Park II v. Hadley*, 408 F.3d 1052, 1059 (8th Cir. 2005) (quoting *Farrar v. Hobby*, 506 U.S. 103, 109, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992)). see also, *Allen v. Tobacco Superstore, Inc*. 475 F. 3d 931, 943 (8th Cir. 2007) (upholding an award of attorney fees and costs to a plaintiff, holding she "was the prevailing party in the case because she obtained judgment in her favor on two of her [eight] claims"); *American Steel Works v. Hurley Const. Co.*, 46 F.R.D. 465, 471-72 (D. Minn. 1969) (citation omitted) (holding that "even though a party does not recover on his entire claim, he still may be the 'prevailing party'").

28. In the context of a civil rights case, ruling on the availability of costs and attorney fees under 42 U.S.C. section 1988, the Eighth Circuit Court of Appeals has held that:

> A plaintiff qualifies as a prevailing party once he has been successful on a single substantial claim brought in the context of a civil rights suit; success on all claims made is not required. It is sufficient if a significant issue is determined in the plaintiff's favor and leads to the achievement of some of the benefits sought by bringing suit. When a plaintiff essentially succeeds in obtaining the sought-after relief in his claims on the merits, that plaintiff is a prevailing party.

See Reel v. Arkansas Dept. Of Correction, 672 F. 2d 693, 697 (8th Cir. 1982) (citations omitted).

29. Plaintiff is the prevailing party in this case. Because Plaintiff prevailed in this case, she is entitled to an award of costs and attorneys' fees in this matter. The Court's Judgment will include language to this effect.

IV. CONCLUSION

Based on the foregoing, and all the files, records and proceedings herein, the Court **ORDERS** as follows:

1. Plaintiff has proved by a preponderance of evidence that Defendant used excessive force against Plaintiff in violation of the Fourth Amendment;
2. Plaintiff has sustained compensatory and other damages as set forth herein;
3. Judgment shall enter in favor of Plaintiff against Defendant Engelstad for her excessive force claims;
4. The City of Gilbert is jointly and severally liable to Plaintiff for her claims of battery;
5. Plaintiff is entitled to her costs and attorneys' fees. She shall submit a Petition for Costs and Attorneys' Fees.
6. The Court will enter a separate Order for Judgment;

Dated: 1/20/15

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